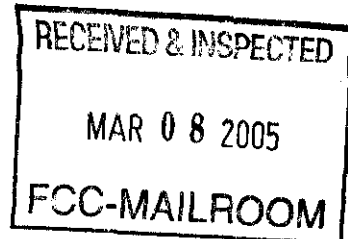


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Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 04-401
FM Table of Allotments,) RM-11095
FM Broadcast Stations.)
(Durant, Oklahoma and Tom Bean, Texas))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 2, 2005**Released: March 4, 2005**

By the Assistant Chief, Audio Division, Media Bureau:

1. Before the Audio Division for consideration is a *Notice of Proposed Rule Making*¹ issued at the request of NM Licensing, LLC ("Petitioner"), licensee of Station KLAJ(FM), Durant, Oklahoma. Petitioner proposes to reallocate Channel 248C2 from Durant, Oklahoma to Tom Bean, Texas as that community's first local service, and to modify the license for Station KLAJ(FM) accordingly. Petitioner filed comments reiterating its intention to file an application for construction permit to effectuate the change of community if the channel is reallocated. No other comments were filed.

2. Petitioner filed its proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.² In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This decision is based on the FM Allotment priorities.³

3. We find that Tom Bean is a community for allotment purposes. Tom Bean is an incorporated community with a 2000 U.S. Census population of 941 persons with its own mayor and city council. Tom Bean is not located within any urbanized area. Although the proposed facility at Tom Bean will provide 70 dBu service to 99.4 percent of the Sherman, Texas Urbanized Area, we find that a *Tuck*⁴ analysis is not necessary because the existing facility at Durant already provides 70 dBu service to 100

¹ *Durant, Oklahoma and Tom Bean, Texas*, 19 FCC Rcd 20899 (MB 2004).

² See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

³ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1988).

⁴ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

percent of the Sherman Urbanized area.⁵ Additionally, a Tuck analysis is not required where the proposed facility at Tom Bean will provide 70 dBu service to 20 percent of the McKinney, Texas Urbanized Area because it falls below the 50 percent trigger.⁶

4. Our engineering analysis shows that Channel 248C2 can be allotted to Tom Bean, Texas in conformity with the technical requirements of the Commission's rules at coordinates 33-28-52 North Latitude and 96-32-03 West Longitude with a site restriction of 6.4 kilometers (4 miles) southwest of the community.⁷ There will be a net gain in service to some 290,122 persons while both gain and loss areas will be well-served with five or more aural services.⁸

5. We find that the reallocation will serve the public interest because it will provide Tom Bean with its first local service and will not deprive Durant of its sole local service.⁹ Therefore, in accordance with the provisions of 47 C.F.R. Section 1.420(i), we will modify the license of Station KLAK(FM), Durant, Oklahoma to specify operation on Channel 248C2 at Tom Bean, Texas.

6. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. Section 801(a)(1)(A).

7. Accordingly, pursuant to authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED That effective April 18, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Durant, Oklahoma	292C3
Tom Bean, Texas	248C2

8. Additionally, IT IS ORDERED That the Secretary of the Commission shall send a copy

⁵ See *Greeley and Broomfield, Colorado*, 15 FCC Rcd 9419 (MMB 2000).

⁶ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (MMB 1995).

⁷ The proposed allotment of Channel 248C2 at Tom Bean conflicts with a prior counterproposal in MM Docket No. 00-148, advanced on behalf of Petitioner for Station KLAX, but which was dismissed. See *Quanah, Texas et al.*, 18 FCC Rcd 9495 (MB 2003) ("Report and Order") *aff'd on recon.* 19 FCC Rcd 7159 (MB 2004), *app. for review pending*. The *Report and Order* dismissed a counterproposal proposing to substitute Channel 248C for Channel 248C2 at Durant, reallocate Channel 248C to Keller, Texas, and modify Station KLAK's license accordingly. In lieu of its earlier proposal, Petitioner now proposes a reallocation to Tom Bean. Our action in this proceeding is subject to any action taken in MM Docket No. 00-148.

⁸ See *LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995). See also *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Comm. Nov. 29, 1983) (The Commission has considered five or more services to be "abundant.").

⁹ Durant would continue to receive local service from AM Station KSEO, noncommercial FM stations KAYC and KSSU, and commercial FM station KLBC.

of such comments to Petitioner's counsel, RETURN RECEIPT REQUESTED as follows:

NM Licensing, LLC
C/o M. Scott Johnson, Esquire
Fletcher, Heald & Hildreth PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209-3801

9. IT IS FURTHER ORDERED That pursuant to 47 U.S.C. Section 316(a), the license of NM Licensing, LLC., for Station KLAK(FM), Channel 248C2, Durant, Oklahoma, IS MODIFIED to specify operation on Channel 248C2, Tom Bean, Texas, subject to the following conditions:

- a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and
- c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

10. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, NM Licensing, LLC is required to submit a rule making fee in addition to the fee required for the application to effect the change in its community of license.

11. IT IS FURTHER ORDERED That this proceeding IS TERMINATED

12. For additional information concerning this proceeding, contact Helen McLean, Media Bureau (202) 418-2738.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau